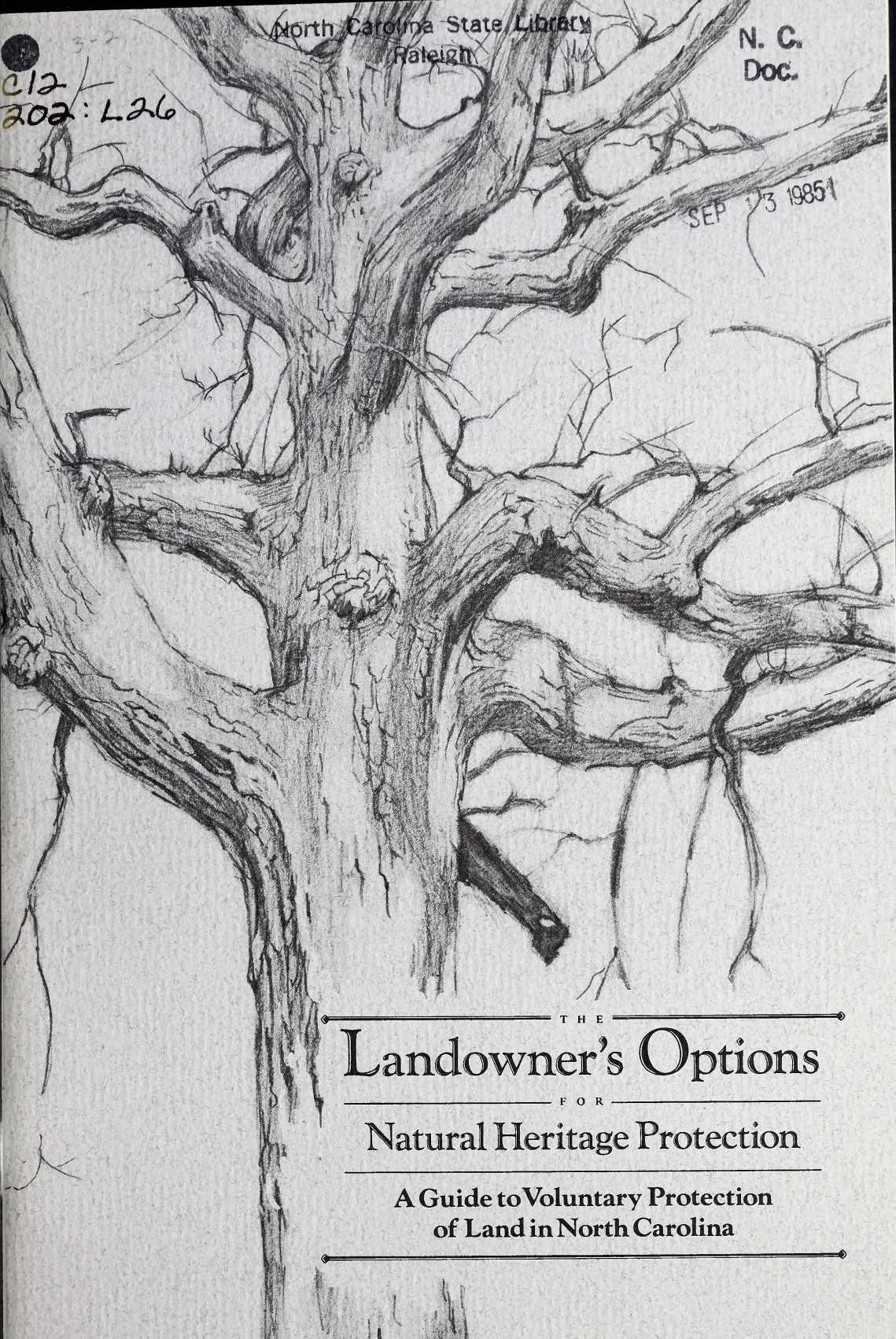




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THE

Landowner's Options

FOR

Natural Heritage Protection

A Guide to Voluntary Protection
of Land in North Carolina



The Landowner's Options For Natural Heritage Protection

**A Guide to Voluntary Protection
of Land in North Carolina**

1985

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NOTE. This booklet is intended as a general guide and introduction to land protection techniques in North Carolina. It should not be relied upon as a sole source of information. Any landowner wishing to protect land should consult a qualified attorney, realtor, accountant, or conservation agency.

This guidebook has been prepared by Charles E. Roe, Coordinator for the North Carolina Natural Heritage Program

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The North Carolina Natural Heritage Program is dedicated to the preservation of the state's natural diversity. The program identifies the outstanding natural areas of our state and works for their protection in alliance with other conservation interests. The Natural Heritage Program provides information and advice to owners of natural areas and to other conservation organizations to help protect and manage natural areas.

Table of Contents

I.	Introduction	1
II.	Options Involving the Transfer of Title	5
	Donations	5
	Outright donation	5
	Donation by will	6
	Donation with reserved life estate	6
	Gifts in trust	7
	Gifts of other property	7
	Tax Incentives for Donations	9
	Federal income tax	9
	State income tax	12
	Federal estate and State succession taxes	12
	Capital gains tax	13
	Property taxes	13
	Sale	14
	Sale at fair market value	14
	Bargain sale	14
	Installment sale	15
	Sale with reserved life estate	15
	Transfer of Title with Conditions Attached	16
	Prior granting of conservation easement	16
	Deed restrictions	16
	Conditional transfers and reverter clauses	17
III.	Options Involving Retention of Ownership	19
	Conservation Easement	19
	Mutual Covenants	21
	Leases	23
	Management Agreements	23
	Registration	23
IV.	Agencies Interested in Acquiring Title or Interests in Land	27
	Private Organizations	27
	Government Agencies	30
V.	Appendices	33
	A. Charitable Deductions	33
	B. Conservation Agreements	34
	C. State Income Tax Certification Process for Gifts of Land for Conservation	36



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I. Introduction

North Carolina possesses a magnificent legacy in its natural environments. From the tallest mountains in eastern America to the vast stretches of ocean beaches, our state is a land of extraordinary beauty and natural diversity. Our natural heritage embodies and enhances our own quality of life.

Yet, North Carolinians must not take their natural heritage for granted. As one of the fastest growing states in the Nation, we are experiencing mounting demands on our land resources. We must take action now to protect our natural resources if the heritage we enjoy is to be passed along to future generations.

Much has been done by federal, state, and local government agencies to preserve the natural landscapes so important to our way of life. It is essential that government continue its efforts to meet the increasing needs for land and wildlife conservation — so necessary for public recreational, educational, ecological, cultural, scientific, and aesthetic values. But government alone cannot provide for the proper allocation of our natural resources.

Many privately-owned natural areas in North Carolina will be destroyed or severely damaged without positive actions by their owners to assure their protection. The North Carolina Natural Heritage Program encourages landowners to protect outstanding natural areas. The decision to permanently protect land is a decision which requires careful thought, a decision which is often difficult to make. Generosity must be weighed against financial realities, personal desires against family needs, the ideal solution against the ability of a conservation agency to be involved.

Certain considerations are often basic, and perhaps the following questions will help you ponder your situation:

- Is the land worthy of being more effectively protected than it is now?
- Do you wish to protect all or part of the property?
- Do you wish to protect the land forever or for a limited time?
- Do you want the land to be protected yet to remain in private ownership, or would you consider transferring ownership to a conservation agency?
- Should you consider a sale or a donation?
- If you transfer title, do you want to protect the land by restricting future use?
- Are tax (income, estate, inheritance, gift, property) implications important to you?
- Do you wish to act immediately, over a period of years, or through your will?
- How would your actions affect your family?

- How would your actions affect your community and its land use and tax considerations?
- Are there conservation agencies or other institutions which might be interested in helping protect your land?

If you own land which is indeed worthy of being permanently protected, please read on. The various ways of voluntarily protecting land and their financial implications are discussed in the following pages. The following chart (figure 1) distinguishes the basic differences in techniques, depending on your wishes to continue to own the land. It may point you to a section of particular interest should you not wish to consider all the options. Permanent protection may not always be feasible or desirable, but it is usually a possibility worth exploring. It is your decision to choose a course of action to insure the protection of your land — the most enduring and priceless legacy that can be provided for the benefit of future generations. Please call upon any of the agencies listed in this booklet for more information or assistance.



Options for Protecting Special Land

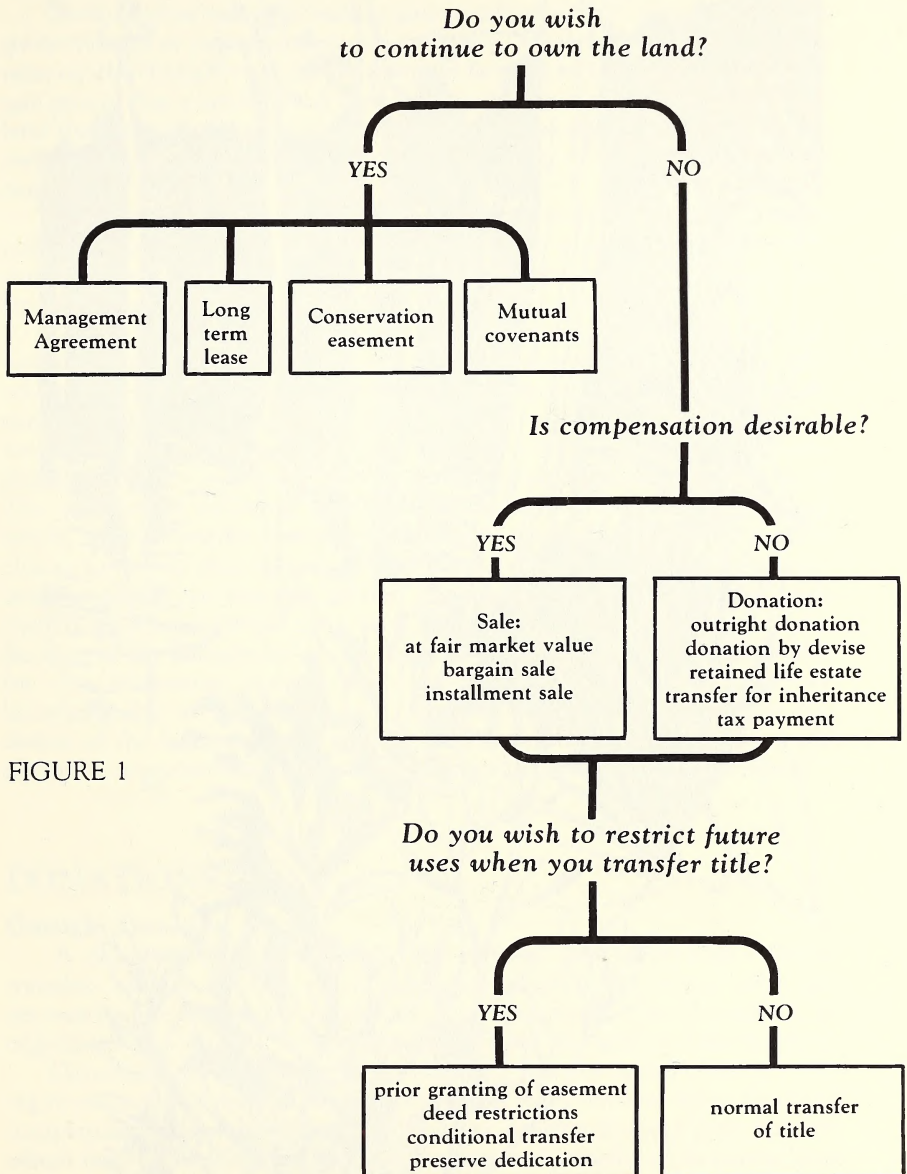


FIGURE 1



II. Options Involving the Transfer of Title

Some landowners may wish to give or sell important natural lands to a governmental or private conservation agency. This may be for a number of reasons: the thought that the land should be used by the public or by a certain group, that a landholding agency is better able to manage or protect the land than an individual owner, that the taxes have climbed too high for the owner to continue to own and protect the land, or that the landowner needs a tax deduction.

Whatever the reason, there are a number of ways the donation or sale may be executed, each with varying financial and personal implications for the landowner. The challenge is to find the way which best suits both the landowner and the agency which is to acquire the land.

The tax laws of our Nation and State encourage gifts of land for conservation purposes. This section illustrates the ways a landowner may take advantage of these methods and the financial benefits of protecting significant natural areas through donation or bargain sale. Conservation agencies are flexible in helping a landowner to determine the best way to convey property. The entire interest or only a partial interest in land may be donated. The owner and receiving agency may negotiate provisions of donation which limit or restrict the future use of the donated land. Some owners choose to donate their interest in land over a period of time in order to maximize potential tax benefits. In that instance, each fractional donation is treated as a separate gift and each is fully deductible for tax purposes. Because of the complexity of our tax and property laws, it will be essential for the landowner considering a donation to consult an attorney knowledgeable in real estate and tax matters. This will insure that the desires of the landowner are accurately incorporated into the terms of the donation or conveyance and that maximum tax benefits will be realized.

DONATIONS

Outright Donation

A donation of land is usually the simplest way to arrange outright transfers of title because no financing or negotiations about price are necessary. The landowner need only obtain approval from the agency or organization to which it will be given, then deed the land to that recipient.

Donations, by definition, rely on the fact that the landowners are willing to protect their land at the cost of giving it away without direct financial compensation. However, there may be tax benefits flowing from the gift which help offset some of the loss. The financial benefits of donating land are obvious. The donor need no longer pay the real estate taxes, income taxes may be reduced, and the estate is reduced in size so that estate taxes

will diminish correspondingly. In addition, in the cases where the recipient of the donation is a government agency or a private charity with public support, the donor can claim an income tax deduction based on the market value of the land as determined by a qualified appraiser.* In some cases, the landowner may want to donate the land in installments to maximize the benefits of the deduction.

A landowner considering a donation will want to carefully select the recipient that is best qualified to receive the gift and can assure that the donor's wishes for the future use and protection of the land are honored.

Landholding agencies review proposed gifts of land carefully, for they are becoming increasingly aware of the financial and management responsibilities that come with the ownership of land. They must look upon gifts of land in light of their ability to care for and use the land properly, and some encourage the establishment of endowment funds when a donation of land is made to provide funds to help meet the management costs.

Under some circumstances landowners may wish to donate their land but not give up their use immediately. In this case, two options exist: donation by will or donation with reserved life estate.

Donation by Wills

A gift of land may be made at the time of death simply by providing the gift in a will. Discussing the gift with the proposed recipient before writing the will can help determine whether the choice of recipient is realistic. When the will is probated, the named recipient agency can decide whether it wants to accept the gift. Should it refuse, the gift would go to the second named recipient, residuary legatee, or, if none is named, to the party found to be appropriate by the court.

The advantage of a donation by will is that the landowner retains full use and control of the land until his or her death. Financially, the landowner does reduce estate taxes by removing the land from the estate. But obviously the owner does not benefit from the income tax savings possible from charitable gifts made during his or her lifetime, nor is the owner free of the responsibility of paying real estate and income taxes during one's lifetime.

The risk involved with making a gift by will is that the named recipient or recipients might not wish to accept the gift at the time the will is probated. Objectives and financial circumstances can change with the passage of time. If the landowner definitely wishes the land to be owned by a conservation agency, the will should be carefully written with this risk in mind. A way of avoiding this risk entirely is by donating the land now but retaining a life estate.

Donation with a Reserved Life Estate

Landowners may donate their land and retain use of all or part of the donated land during their lifetime and/or the lifetimes of other members of

*See Appendix A regarding charitable donations and Appendix C regarding the process for certifying gifts of land for conservation as eligible for state income tax credits.

their immediate family. By doing this, they know that the gift has been accepted by a recipient suitable to them, yet they can continue to use the land. This type of donation is accomplished by giving the recipient a deed which includes a provision allowing lifetime use of the land by the donor or others.

The donor usually must pay real estate taxes on that portion of the land retained for the donor's or the family's use. If the gift of land qualifies for treatment as a charitable deduction, the donor may take as an income tax deduction the value of what was actually given up. This would not include the value of the retained life estate, as determined by actuarial tables. If the gift qualifies, its value also would be removed from the value of the estate that is subject to gift and estate taxes. The Internal Revenue Service's regulations that govern the amount that can be taken as a charitable deduction each year are the same as those which apply to outright donations and conservation easements. (See Appendix A regarding charitable donations.)

From the point of view of the recipient of the gift, donation by will or with reserved life estate may be preferable if the agency would like to own the property but does not wish to accept the responsibilities of immediate ownership.

Gifts in Trust

A donor may establish a trust for a designated person who will receive payments from the property and, at the same time, provide a gift in the public interest for which a reduction in income and estate taxes will be earned. A donation made by transfer to a "charitable remainder annuity trust," a "charitable remainder unitrust," or "pooled income fund" can be a very effective way of giving property of substantial value to a qualified organization for land preservation or public recreation, while retaining the benefit of an income equivalent from the property for life or a specified period of time. The specific requirements which must be met with respect to gifts in trust can be quite complex, and a detailed discussion of the subject is not within the scope of this booklet. Advice on this subject should be obtained from qualified legal counsel or the trust department of a financial institution.

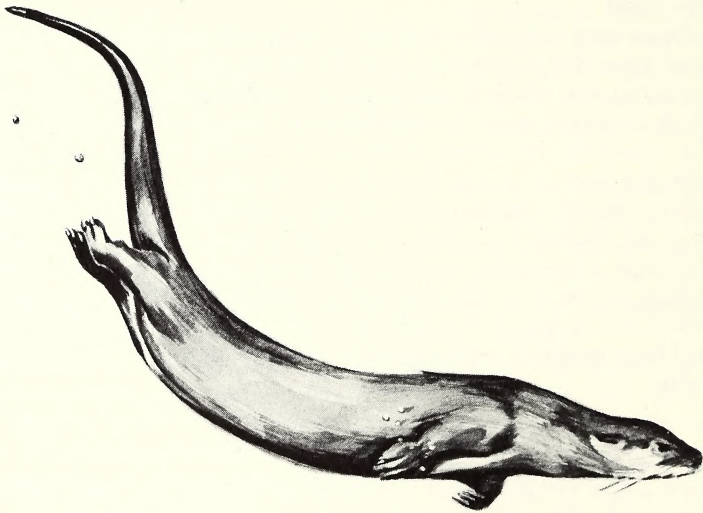
Gifts of Other Property

Landowners of significant natural areas are not the only individuals who can help preserve the integrity of our natural heritage by making donations. Most private conservation organizations and public conservation agencies are authorized to accept tax deductible donations of stocks, bonds, developed real estate, cash, or other property.

A good example of a charitable conservation agency which operates with enough flexibility to accept gifts of almost any kind is The Nature Conservancy's "Trade Land" program. After accepting a gift of property with little or no environmental value, The Nature Conservancy will sell the land on the open market and apply the proceeds toward its land preservation program. The donor enjoys the same benefits had the donated property possessed great natural values.

Gifts of appreciated property, such as stock and other securities, are treated for tax purposes in the same manner as gifts of land. The basic income tax savings from donations of long-term capital gain property of this type is increased by the amount of capital gain tax which would have been payable if the property had been sold rather than donated. For this reason it may make good sense to donate stock which has appreciated in value rather than selling it and donating cash.

When donating land or other appreciated property, the donor may specify instructions regarding its use. These instructions could include requirements including the type or the location of property to be purchased with the proceeds of the gift and the purposes for which that property is to be used.



TAX INCENTIVES FOR DONATIONS

Federal Income Tax

The tax laws of our Nation encourage individuals and corporations to donate cash or other property to governmental bodies or qualified charitable organizations. A donation is deductible as a charitable contribution for income tax purposes and thus reduces the donor's tax liability. Section 170 of the Internal Revenue Code, as amended, governs the tax deductions for most donations.

Besides contributions of cash or securities, qualifying gifts may include the owner's entire interest or partial interest in land. The size of the deduction is determined by the fair market value of the gift. In the case of giving a partial interest in land, the value of the gift is the difference in the land's value before and after the conveyance of conservation restrictions. This is true even when the owner bought the land at a lower price than its current value.

EXAMPLE: The taxpayer bought property ten years ago for \$30,000. Its fair market value today is \$50,000. After conveyance of a conservation restriction, the property is worth \$35,000. Providing that all the other requirements of the tax code are met, \$15,000 may be deducted from the landowner's income tax return.

Gifts qualify for federal income tax credits when made to public agencies or to qualified charitable organizations. The potential recipients for gifts described in Section IV of this booklet qualify as general tax exempt organizations. If you have any doubt concerning the qualifications of a potential recipient of your gift, the Internal Revenue Service or the organization itself can furnish a certificate stating the organization's tax exempt status.

An important limitation on the size of a taxpayer's deduction is the 30% rule. Where a gift is made of land or other property that has increased in value since it was acquired, the taxpayer can take a maximum charitable deduction of only 30% of his or her adjusted gross income for any particular year. Adjusted gross income generally means gross income minus business deductions, 60% of long-term capital gains and several other specialized items. Any contributions above this 30% limit usually can be carried over for up to five succeeding years.

EXAMPLE: If a taxpayer has an adjusted gross income of \$20,000 and makes a charitable gift of land valued at \$10,000, only 30% of \$20,000 (\$6,000) can be deducted that year. The remaining \$4,000 may be carried over and deducted in subsequent years.

There are several exceptions to the 30% rule. One is that a taxpayer may elect to take a deduction of up to 50% of his or her adjusted gross income, if the donor reduced one's donation, based on fair market value, by 40% of what would have been long-term capital gain had the property been sold instead of donated. This election is usually made only when: 1) the value of the property is substantial compared to the taxpayer's income, 2) the appreciation in land values since the property's acquisition has been relatively small, and 3) it is desirable for the taxpayer to take the maximum deduction as soon as possible.

EXAMPLE: Suppose a taxpayer has an adjusted income this year of \$40,000. Next year, because the taxpayer will retire, income will drop to \$10,000 annually. The taxpayer has also decided to make a gift of land for conservation purposes to a land conservancy. The property, which is currently valued at \$50,000, was purchased five years earlier for \$40,000.

If this taxpayer uses the 30% rule, only \$12,000 (30% of \$40,000) can be deducted in the current year and \$3,000 (30% of \$10,000) in each of the five succeeding years. Total tax deductions for a \$50,000 gift would equal only \$27,000.

Because this taxpayer anticipates a substantial reduction in future income, it appears advantageous to maximize deductions during the current year. By electing to apply the 50% rule, the taxpayer may first reduce the \$50,000 gift by \$4,000 which equals 40% of the \$10,000 long-term capital gain the taxpayer would have realized had he or she sold the property (\$50,000 market value less acquisition cost or "basis" of \$40,000). By making the election, the taxpayer can then take a \$20,000 charitable donation (50% of \$40,000) in the current year, and a \$5,000 deduction (50% of \$10,000) in each of the next five years.

The total tax deductions achieved by using the 50% rule would be \$45,000, compared to only \$27,000 charitable deduction under the 30% rule. In addition, the taxpayer is able to deduct an extra \$8,000 (\$20,000 instead of \$12,000) in the first year when in a high tax bracket.

A corporation's deduction for charitable contributions of cash or property is limited to 5% of its taxable income for the year. As in the case of an individual, a donation which exceeds the 5% limitation may be carried over the next five years.

In certain instances, a donor may deduct taxes for giving partial interest in property. The IRS will permit tax deductions for:

- contribution of a remainder interest in a personal residence or farm, with the donor retaining a life estate.
- contribution of an undivided portion of the taxpayer's entire interest in the property.
- a qualified conservation contribution (as defined below).

New rules have been adopted regarding the deductibility of conservation restrictions. The IRS has drafted regulations to implement rules enacted by Congress in 1980 requiring that the conservation restrictions be permanent, and that the contribution must be exclusively for a "conservation purpose," which is defined as:

1. The preservation of land areas for outdoor recreation by, or the education of, the general public.
2. The preservation of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems.
3. The preservation of open space (including farmland and forest land) which will yield a significant public benefit and will either provide scenic enjoyment for the general public or be pursuant to a clearly delineated federal, state, or local governmental conservation policy.
4. The preservation of an historically important land area or certified historic structure.*

The legislation left some ambiguities, especially regarding open space land. Some of these issues may be clarified by subsequent IRS regulations. Landowners with doubts about the potential deductibility of conservation restrictions may apply for a ruling from the IRS. Landowners who donate partial interest in property will want to document the significant public benefits that preservation of their land will yield.**



*Tax Treatment Extension Act of 1980, Section 170(h)(4)(A).

**See Appendix A for more information regarding charitable deductions.

State Income Tax

North Carolina allows a state income tax credit for individuals and corporations that make qualified donations of interests in real property for conservation purposes (N.C. General Statutes 105-130.34 to 150.12, enacted 1983). The credit will equal 25 percent of the fair market value of the donated property interest, up to a maximum credit of \$5,000 for a taxable year. Credits will be allowed on gifts of interest in real property useful for public beach access, public access to public waters or trails, fish and wildlife conservation, or other conservation purposes found suitable by the N.C. Department of Natural Resources and Community Development.* Donations may be made to state and local government agencies, and other agencies qualified by state law to receive charitable gifts and organized to receive and administer lands for conservation purposes. Tax credits will not be allowed for lands required to be dedicated pursuant to local government regulations or ordinances.

Federal Estate and State Inheritance Taxes

Gifts of property to governmental agencies or qualified conservation organizations may reduce federal and state estate taxes otherwise payable on the death of the landowner. For the landowners who will leave sizable estates upon their death, the most important long-range impact of a gift of land or conservation restrictions may be upon their estate taxes. Occasionally, landholdings in North Carolina have had to be broken up or sold for development after an owner's death in order to pay the estate tax, even though this may not have been the desire of the descendant or heirs. Even if the land is not sold immediately, the increased estate taxes attributable to the land may so deplete the other assets in the estate that eventual sale by the heirs is virtually assured. Fortunately, these effects were alleviated in 1981 when new federal laws substantially reduced estate liability by increasing the amount of property which can be transferred tax-free. Under the Economic Recovery Tax Act of 1981 the unified credit for estate and gift taxes will be increased incrementally each year, so that federal death and gift taxes will be effectively eliminated for estates and transfers of \$400,000 in 1985, \$500,000 in 1986 and \$600,000 and under in 1987. These increases in the amount a descendant can receive tax-free will eliminate the problem of estate taxes for many people. Still, if any estate (which includes all land, buildings, stocks, personal property, and other assets) does exceed the amount of the exemption, the excess will be taxed at an extremely high rate.

The owner can frequently mitigate or avoid these problems by making a charitable gift of land or conservation restrictions either prior to death (by deed or in trust) or at the time of death (by will). If the gift is made to a federal, state, or local governmental body or to a qualified charitable organization, the estate is given a full deduction for the value of the gift.

*See Appendix C for information on the State's certification process for allowing income tax credits for gifts of land for conservation.

Capital Gains Tax

If a landowner has owned property for over a year, and then sells it for more than its original cost, he or she will be required to pay a federal capital gains tax on 40% of the "profit." In addition, state taxes will result from the sale as well. A gift of land or conservation restrictions can reduce or even eliminate the capital gains tax entirely. While wealthy taxpayers generally tend to realize greater tax savings from charitable contributions than do taxpayers with more modest incomes, people in the lower tax brackets may still realize substantial benefits from a land gift or conservation restrictions. Each situation must be examined separately, and each landowner must decide for himself or herself how to balance financial goals with conservation goals.

Property Taxes

Landowners who convey conservation restrictions on their land to a government agency or qualified charitable organization will be taxed only upon the value of the remaining rights which have been retained.*

North Carolina's current use assessment statutes (G.S. 105-277) provide preferential assessment for participating individual owners of agricultural, horticultural, and forest lands. Owners of eligible land may apply to have their property assessed at its productive or "use" value, rather than at its development or fair market value. This program can provide a solution to excessive property taxes for agricultural and forest lands. However, there are other lands, including special natural areas and ecologically sensitive areas where agriculture or timber management is not appropriate. Until North Carolina state law is amended to fill this gap, the preferential property tax program does not benefit important natural areas.

However, state law (G.S. 105-275) does exempt from property taxes any real property owned by a qualified nonprofit organization that holds and uses the land as a "protected natural area" for educational and scientific purposes. The statute defines a "protected natural area" as "a nature reserve or park in which all types of wild nature, flora and fauna, and biotic communities are preserved for observation and study." This exemption applies only to nonprofit, charitable conservation organizations and not for other private landowners.



*See section III of this booklet for more discussion of the property tax advantages for conservation restrictions on private properties.

SALES OF PROPERTY

A landowner may wish to sell his or her property, yet prefer to protect its natural resources. To accomplish this objective, restrictions can be placed on the use of the property to secure the preservation of the land's natural qualities. The land can then be sold on the open market, an option which is discussed in the section "Transfer of Title with Conditions Attached." A landowner may, however, wish to sell the property to a conservation organization or public agency. There are landholding agencies which do have funds for outright purchase of some lands that have special attributes — such as exceptional ecological resources — or that can be utilized for some agency purpose — such as a public park, wildlife sanctuary, or recreational area. In considering a sale to such an agency, the landowner has the option of selling at fair market value, at a "bargain" price, or in installments.

Sale at Fair Market Value

Sale at fair market value needs little explanation, but two major considerations should be kept in mind. The desire to sell at fair market value is often hampered by the fact that most landholding agencies have limited funds available for purchase of land and must be very particular about their choices. Also, if land is sold for its full value and if the property has appreciated in value since its purchase, the seller will be liable for income tax on the capital gain. This can significantly affect the net profit of the sale.

Bargain Sale

The bargain sale is an alternative that can avoid some of the disadvantages of a sale at fair market value. In a bargain sale the landowner sells the property to a government agency or charitable conservation organization for a price less than fair market value. Because the selling price is lower, the landowner is more likely to find a landholding agency willing to purchase the property.

The bargain sale may also be financially advantageous to the landowner. The seller not only receives some money for the land, but can also claim an income tax deduction. The Internal Revenue Code allows a deduction as a charitable contribution for the difference between the bargain price received and the fair market value.* The cash benefit of the deduction can help compensate for the dollars foregone by selling at less than fair market value. Also, by selling at less than fair market value, there would be a smaller capital gain to be taxed.

*The recipient must be a government agency or publicly-supported private charity for the landowner to claim the income tax deduction for a charitable contribution. See Appendix A for details about charitable contributions and gifts of land.

Installment Sale

An installment sale is another alternative which may be advantageous to both the landowner and the purchasing agency. An installment sale involves an agreement between the landowner and the purchaser whereby the purchasing agency pays for the land in annual installments. Or, an agency may buy a portion of the land each year, with an option to purchase the remaining tracts in years thereafter. Local governments and private organizations may use either method, but the state and federal agencies must use the latter approach.* In either case, the landowner and the buyer can negotiate for use of the land and for the responsibility for payment of property taxes until the sale is complete.

The financial advantage to the landowner is in spreading the income over a number of years. In doing so, the taxable gains in some circumstances can be spread over a period of years, thus minimizing the amount of tax that must be paid. The advantages to the purchasing organization or agency are that it has to pay only a fraction of the entire cost at first and that it may not have to worry about maintenance of the property until the sale is complete, or it may take management responsibility immediately, depending on the terms of the agreement between the landowner and the purchaser.

Sale with a Reserved Life Estate

Landowners may sell property to a landholding agency with a reserved life estate so that they and their family can continue to use the land during their lifetime and/or the lifetimes of other members of their immediate family. The landowner would continue to pay real estate taxes on the land while having use of the property. The federal income tax (capital gains) implications of a sale with a reserved life estate would, of course, depend on whether the sale was at fair market value, at less than fair market value, or in installments.



*North Carolina authorizes its counties and municipalities to purchase properties in installments (G.S. 160A-20). Federal and state agencies cannot buy on an installment plan because they cannot pledge the credit of the government. They can, however, purchase a specific parcel or portion of the total land area each year and agree to purchase the remaining parcels on a contractual basis. In effect they would exercise an annual option to purchase a specific portion of an area.

TRANSFER OF TITLE WITH CONDITIONS ATTACHED

Whether by sale or donation, the outright transfer of land without strings attached is very straightforward. But the landowner making an unconditional transfer does not have the legal means to specify how the land will be used in the future. In many instances this may be of no concern — if the agency is likely to be long-lived and has proven faithful to its given purposes, or if it seems advisable that the agency not be restricted in its use of the land. On occasion, however, it may seem wise to place limiting conditions on the use of the land at time of transfer.

Limiting conditions may also be imposed if the land is to be sold on the open market and if the landowner wishes to influence its future use and hence protect its natural attributes.

Prior Granting of a Conservation Easement

Because conservation easements are binding on all subsequent owners of the land, a landowner may grant a conservation easement regulating the future use of the property before transferring ownership. (See "Conservation Easement").

The landowner may count the loss in market value due to the granting of the conservation easement as a charitable deduction for income tax purposes, but on the same count, should expect a lower price if a sale is being considered. If the land is donated to a qualified charitable organization or government agency, the donor may still take the value of the land after the easement as a charitable deduction. (See "Donations").

The prior granting of a conservation easement provides an excellent way to control the future of the land if it is to be sold on the open market. However, in most cases it might provide more protection than is necessary when the land is to be transferred to an established private or public conservation agency which is experienced in acquiring and managing land. The use of other types of limiting conditions can be considered in those cases, as well as when a recipient of a conservation easement is not available.

Deed Restriction

Restrictive covenants guiding the future use of the property may be placed in the deed at the time of transfer. These restrictions can be much like those contained in conservation easements or in mutual covenants, but they may prove to be less permanent than conservation easements because they are limited by the doctrine of changed circumstances. In other words, the court may refuse to enforce the restriction if it no longer seems possible to achieve the benefit sought when the restrictions were created. Deed restrictions also vary from conservation easements in that there is usually not a third party assuming the monitoring and enforcement responsibility. Deed restrictions may be appropriate if the land is being transferred to another landowner or to a landholding agency.*

*North Carolina law pertaining to deed restrictions limits their usefulness. Those deed restrictions that lack "mutuality" of benefits are considered to be "personal covenants" and do not qualify as "real covenants" and, therefore, are not enforceable on subsequent owners.

The question of enforceability is key when considering deed restrictions. Depending on the circumstances, there may be limitations on who can enforce the restrictions and for how long. If a landowner conveys property, inserts restrictions in the deed, and retains no land nearby, then even they may not be able to enforce the restrictions against the subsequent owners of the land. If the landowner conveys part of the property and burdens it with restrictions, then the successors in title to the remaining property may enforce the restrictions against whomever should own the covenanted property in the future. In this case, the right to enforce rises from the fact that the presence of the restrictions on the transferred property benefit the landowner's remaining land.

Deed restrictions may be imposed in another way if the land is to be given away to a landholding agency. A landowner can transfer property to an intermediary conservation agency or organization which owns other land in the area, then transfers title to the permanent landholding agency. The intermediary agency inserts restrictive covenants in the deed at the time of the second transfer. This seemingly complex transaction is performed for good reason. By inserting the restrictions, the conservation agency holds the right to enforce the covenants, and presumably the agency will be long-lived and will be interested in seeing that the restrictions are not broken. The case for enforcement is strong as long as the intermediary agency continues to exist and the ownership remains the same.

As in the case of all alternatives, the financial implications of the use of deed restrictions must be considered. Deed restrictions will affect the market value of the land if they significantly limit its development potential. Thus, the presence of restrictions may lower the price if the property is to be sold, or lower the value of the gift if the land is donated to a governmental or charitable agency.

It is important to note that the Internal Revenue Service does not allow one to claim the loss in value resulting from the imposition of deed restrictions as a charitable deduction. Because this is so, a landowner may choose to donate the land to an intermediary agency or organization which then inserts the deed restrictions and transfers title. The landowner is able to claim an income tax deduction for the unrestricted value of the land, provided that the intermediary agency is of the type that qualifies the donor to do so.

Conditional Transfers and Reverter Clauses

One can also control the future use of land by using a form of deed that spells out the restrictions on use *and* states that title will transfer to a certain named party if the restrictions on use are violated. Thus, the conditions may be similar to deed restrictions, but they carry more force; breaking the conditions may mean loss of title rather than the enforcement of the restrictions on use.

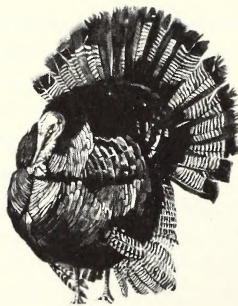
A conditional transfer may be constructed in one of several ways. The deed may be worded so that the original owner and heirs reserve the right to reassert ownership at their own choice if the landholding agency disobeys the conditions. Or the transfer may be in the form of a "possibility of reverter," in which case title would revert automatically to the landowner or

heirs. Lastly, the landowner could choose to name another charitable landholding organization which would automatically assume title if the conditions for use were no longer being fulfilled.

Conditional transfers may enable the landowner to claim the value of the gift as a charitable deduction if the gift is given to a qualified recipient. By Internal Revenue Service regulations, a donor must transfer land to a government agency or a publicly-supported charity in order to claim the value of the gift as a deduction. Because the existence of restrictions may reduce the appraised value of the gift, a landowner wishing to maximize the income tax deduction may want to transfer the unrestricted land to a qualified agency which would then impose the conditions and convey the land to the agency that is to own the land permanently.

There are certain legal limitations on the use of conditional transfers for permanent land protection. Courts, which tend to disfavor conditions, may be reluctant to enforce the conditions through forfeiture of title if litigation becomes necessary. Despite their possible limitations, conditional transfers are an appealing way of regulating future use because they are created with ease, particularly if an intermediate agency is not involved. At the same time they provide strong guidance for the use of the property — loss of title is a severe penalty for breaking the regulations set on use.

Practical considerations become an important aspect when analyzing the utility of this technique. Would the heirs take the initiative to reassert ownership if necessary? If the land reverted automatically to them, would they treat it wisely? If an intermediary or second agency should be involved, is there one which is willing to participate and which would act responsibly in the future? These are considerations which must be judged against the facts of the particular situation.



III. Options Involving Retention Of Ownership

Most of North Carolina's natural areas and environmentally-sensitive lands will remain in private ownership. It is not possible for government agencies or conservation organizations to acquire and protect all the important natural areas and environmental resources of our state. Not all land is for sale, much of it is too expensive to purchase, withdrawal of private lands is sometimes unpopular, and public agencies are increasingly unable or reluctant to incur costs of purchase and management in acquiring more land. Many private landowners wish to retain their properties. If the natural heritage and natural beauties of North Carolina are to be preserved, it will be due primarily to active participation and initiatives by private property owners — private landowners concerned enough to protect their natural lands by voluntary actions. A variety of options are available for private owners to protect their natural lands while retaining ownership.

The Conservation Easement

A conservation easement is a legal means by which a landowner can voluntarily set permanent limitations on the future use of the land, thus protecting the land's natural qualities.* Through an easement, the owner conveys to a qualified public or private organization the right to prevent certain uses of the land in the future or to use it for specific purposes. The attraction of the conservation easement lies in the fact that the land remains in private ownership. The owner may use, sell, lease, or convey the land subject to the explicit terms of the easement, because neither the title nor right to possession of the land is given up by the agreement. The responsibilities and rewards of ownership continue, and unless specified otherwise, the landowner retains full control over public access just as before granting the easement.

The limitations on land development set forth in conservation easements are tailored to suit the unique characteristics of individual properties, as well as the different needs and interests of individual landowners. Generally, the limitations prescribed in an easement limit the type and location of development activity, and they specify what can be done to the surface of the land and its natural resources. The versatility of conservation easements allows them to range from the easements that assure that the land will remain in undisturbed natural condition, to the easement that allows limited residential use, farming, and properly managed timber harvesting.

*See Appendix B for the Historic and Conservation Agreement Act, N.C. General Statute 121-34 to 42.

Not only do the type of restrictions vary, but so can the size of the property under easement. An owner may place under easement the entire property or only the portion that has greatest significance for conservation interests. The size can be several acres or several thousand. Each easement is created in light of the particular situation, according to the values of the land and the activities and wishes of its owner.

The easement is a legal document which is written in deed form and is filed with the county register of deeds. The protection afforded by conservation easements is usually permanent because easements legally bind all present and future owners of the land. The easement burdens the title to the land thereafter, whether the land is transferred by sale, by gift, or by will.

A conservation easement need not open the land to public use. But if the owner wishes to do more than preserve the integrity of the natural resources, the easement may provide for limited public recreational and educational activities, such as hiking, fishing, and nature study.

The limitations contained in conservation easements have lasting effect in practice because each easement is granted to an organization or agency interested in preserving the natural characteristics of the land. The sole responsibility of the recipient of an easement is to assure that neither the present nor any subsequent owners disregard the regulations on use set forth in the easement. An easement would be enforced by litigation by the recipient, so the recipient agency must have the resources and determination to make sure that the easement is enforced. Because the agency is assuming a long-lived and important responsibility when it agrees to accept an easement, it makes the decision thoughtfully and in accordance with its own objectives. Those public agencies specifically identified in North Carolina General Statute 121-34 to 42 are "the State, any of its agencies, any city, county, district or other political subdivision or municipal or public corporation, or any instrumentality of any of the foregoing." In addition, any private charitable corporation or entity founded for conservation purposes may also receive conservation easements. Public and private agencies interested in accepting conservation easements are discussed in Chapter IV.

People grant conservation easements primarily because they wish to protect land which they value and which will be important for its natural attributes in the future. Their greatest reward is their sense of satisfaction at having protected something of value. However, the financial benefits of granting a conservation easement in perpetuity can also be important.

A conservation easement will affect the market value of the land to the extent that it limits the development and use potential. It is the effect on market value that is important when considering the financial aspects of easements.

Any reduction in the market value may lower estate and inheritance taxes. Taxes must be paid on the amount an estate exceeds the exemption limits set by state and federal governments, and these taxes would reduce the assets in the estate going to the owner's heirs. Assuming that a parcel of land is part of a taxable estate, federal and state taxes may have to be paid based upon the appraised value of property at the time of death. Thus, any reduction in the value of the property caused by the granting of an easement will similarly lower estate taxes. In certain instances, the reduction in value

might even bring the value of the estate below the exemption limit and free the heirs from paying estate taxes. At a time when land values are high and are still climbing, this incentive for granting a conservation easement may be important both for the heirs and for the future of the land. All too often land must be sold to cover the estate taxes.

If a conservation easement is granted for a payment by the recipient, it constitutes a taxable event. If the easement is donated, it can constitute a charitable contribution.

The loss in market value resulting from the grant of a conservation easement in perpetuity may also be entered as a charitable deduction when the donor calculates his or her income tax.* The reduction in income tax that results from taking a charitable deduction can help a landowner cover the costs of owning and maintaining the property.

If the land is to be given to an individual prior to death, federal gift tax may be due. The lower value may reduce the amount of the tax, or in some cases, may eliminate the need to pay any tax for that gift.

There may also be a property tax benefit. Easements do not remove land from the tax rolls, but assessors must consider the effects of enforceable restrictions, such as conservation easements, on the value of the land. Thus, the land should be assessed at its actual value reflecting the limited potential use of the land. Actual value is defined as fair market value — in other words, what a willing buyer will pay. County assessors should be notified after a conservation easement is granted, so that property taxes may be reassessed.

In summary, the most distinctive aspect of protecting land through the grant of an easement is that the land remains in private ownership, yet its use is regulated and the protection can be stronger than that afforded by zoning or state land use laws. The financial aspects can be important from both the point of view of the owner's family and the future of the land.

A landowner can take this voluntary measure quite easily, but must weigh the decision carefully, for once done, it is difficult to reverse. The financial benefits must be weighed against the realities of a loss in market value; the protection must be weighed against the need for flexibility. In many instances, however, the range of covenants that can be contained in a conservation easement and the way they may be applied, afford tremendous room for finding a proper balance of personal and conservation considerations.

Mutual Covenants

Occasionally there are situations where a conservation easement may not be feasible, either because there is no recipient agency interested in accepting the easement or because the landowner does not want to enter into an agreement with an agency or organization. In such a case, it would be possible to limit the future uses of the land through the imposition of mutual covenants if there are several landowners in the immediate area interested in entering into mutually restrictive agreements.

Neighboring landowners having a common conservation interest may

*See Appendix A regarding charitable deductions.

sign an agreement containing mutually beneficial protective covenants controlling the future of their land. The agreement would be recorded in the county records and would be binding upon subsequent owners just as an easement would, and the types of restrictions imposed would be much the same. These covenants would then be enforceable by any of the landowners who entered into the mutual agreement or by any future owners of the land.

These covenants differ from conservation easements in three respects. First, the nature of the enforcer is quite different. It would be a person or a group of people rather than a conservation agency or organization. Though the presence of any restrictions of which others are aware is likely to restrain forbidden acts by the owners, enforcement would ultimately depend on the determination and resources of an individual. Normally enforcement of the terms of the covenants by the neighboring landowner is not legally mandatory; rather, it is optional.

The second difference is that mutual covenants may not be as lasting as the restrictions contained in an easement. By their legal nature they would be subject to the doctrine of changed conditions; a court would be able to refuse to enforce the covenants if it felt that it is no longer possible to achieve the benefits sought when the covenants were imposed.

Lastly, there are the financial considerations. These covenants could receive a similar treatment as do easements when the property taxes and estate taxes are calculated. The local assessor may consider them, and the appraiser may take them into account when determining the value of an estate at time of death. The imposition of these covenants, however, does not enable landowners to claim the loss in market value as a charitable deduction on their income tax returns.

While not as strong as conservation easements, mutually restrictive covenants provide an alternative for those instances when easements may not be feasible or desirable. They do, however, require the presence of the right combination of people and circumstances.



Leases

Another option available to the landowner is that of granting a long-term lease to a land management agency. Leases are rental agreements. An agency pays rent to the landowner and takes temporary possession of the property in order to control its use. The lease would allow for unrestricted and exclusive use of the land by that agency for the given number of years, and it would be filed with the county register of deeds. Even if rental payments are not received for the use of the land, there may be other financial incentives which accompany the leasing of land. Although it is not possible to take a charitable deduction for the value of a lease which is donated, any impact of the lease on the value of the land would be taken into account when estate taxes are calculated.

Certain use restrictions can also be incorporated within the lease. Further, provisions could be contained that if the lessee (conservation agency or organization) does not use the property as directed, that the lease would be automatically terminated, and all of the lessee's interest in the property would thereafter be forfeited.

The lease provides an alternative for those who may not wish to transfer their land to a conservation agency or organization but who want to see it used or protected by such a group for a period of years.

Management Agreements

Management agreements are legal contracts between landowners and conservation organizations, obligating the landowner to manage the property in a specific way for a specified period of time to achieve purposes mutually accepted. These agreements are well suited for private landowners who have traditionally and consciously managed their property for natural values. Most frequently, management agreements are voluntarily granted by landowners. The agreement is tailored to suit both parties. The agreement can last as long as both parties desire. The agreement may be recorded with the county register of deeds and may produce tax incentives similar to those gained by leases.

Management agreements have been a commonly accepted means to protect natural areas in Great Britain, and in recent years have been used more frequently by conservation organizations in this country.

Registration

The N.C. Department of Natural Resources and Community Development has established the North Carolina Registry of Natural Heritage Areas to recognize and honor landowners who promise to protect important natural areas. The Natural Heritage Program arranges these voluntary agreements with private owners of natural areas and with public land management agencies. The registry has proven to be an effective and popular means to encourage protection of natural areas. Sites have been registered by many individuals, timber companies, utility companies, other corporations, colleges and universities, hunting and sports clubs, churches, Scouts and civic groups, various conservation organizations, and federal, state, and local government agencies.

For an area to be eligible for registration, it must possess significant natural values such as an exemplary natural community habitat type, endangered or rare species of plant or animal, outstanding geologic feature, significant wildlife habitat, or other unique ecological resource or exceptional natural conditions. Additionally, a site is evaluated on its educational and research opportunities, diversity of flora and fauna, the quality and viability of the natural features, absence of damaging land uses and extent of alteration from past disturbances, its capacity for being maintained in natural condition, and capability to protect the area.

An area is entered on the registry only after the owner or managing agency voluntarily agrees to have it recognized as a protected natural area and signs a conservation pledge. Owners are given written descriptions and management recommendations for their natural areas. Owners are awarded framed certificates in recognition of their cooperation. The Natural Heritage Program maintains frequent communication with owners of registered areas and conducts an annual monitoring review. Owners of registered areas do not as yet receive any tax incentives for voluntarily assuring their protection.



CONSIDERING THE CHOICES

Many of the hardest questions that will affect the landowner's final decision must be answered by the owner alone — questions such as whether to give up the development potential of the land and how important continued ownership of the land is to the owner and one's family. A landowner can help ensure a proper decision by obtaining professional advice.

A landowner who is seriously considering protecting a property through use of any of the legal techniques described should discuss the alternatives with an attorney who is familiar with land conservation law and the tax implications of conservation measures. Although the final legal transaction may not be complex, a landowner needs to be sure that the alternative chosen is legally sound, that the legal instrument used will be able to fully accomplish the goal, and that the action will be wise from a tax planning perspective.

Also a landowner may wish to consult a real estate appraiser to determine the approximate effect of the proposed measure on the value of the property or the value of the gift that will be donated. Only if a landowner has a realistic idea of the financial impact of the conservation measure can one determine whether he or she can afford to take the step and to what extent any tax benefits will counter the loss in value. The services of an accountant may be required to help with these determinations if the landowner's financial situation is complex.

Should a landowner consider the conservation alternatives and decide not to take action now, the subject need not be closed. Circumstances and thoughts may change with the passage of time, and actions may later become appropriate.

Landowners should choose the conservation method most appropriate for them after considering their individual financial and personal needs and their desires for the land. The range of options is wide enough to allow most landowners to find a suitable solution. The presence of committed conservation organizations with similar objectives will enable North Carolina landowners to achieve their goals.



IV. Agencies Interested In Acquiring Title Or Interests

Many of the protective arrangements discussed in this booklet depend upon the involvement of a strong landholding agency which guarantees that the land is indeed protected in the way the landowner envisions. The following is a listing of many of the landholding agencies and organizations which are active in North Carolina. Each has its own particular interests and its own areas of responsibility.

PRIVATE, NONPROFIT ORGANIZATIONS

Private, nonprofit conservation organizations can acquire land or interests in land in North Carolina. The desirability of a property is judged according to how well the potential uses of the land fit within the objectives of the organization. When private organizations acquire land or easements, they appreciate receiving contributions of money to help cover the future monitoring and management expenses that may be associated with a property or an easement.

Whether or not the organization wishes to involve itself in conditional transfers or insertion of deed restrictions will depend entirely on the property being considered and its relation to the organization's interests.

All the following organizations are exempt from federal and state income taxes and are qualified to accept tax-deductible contributions of property, partial interests in land, or money.

The Nature Conservancy

Southeast Regional Office
P.O. Box 270
Chapel Hill, N.C. 27514
919-967-5493

North Carolina Chapter Office
P.O. Box 805
Chapel Hill, N.C. 27514
919-967-7007

The Nature Conservancy is a national organization dedicated to the preservation of the most important remaining natural areas. TNC is interested in acquiring properties that include unique and endangered species and areas that preserve the diversity of North Carolina's natural features. TNC may accept restrictive conservation easements and management agreements. TNC has helped preserve more than 200,000 acres of critical natural habitats in this state. The N.C. Nature Conservancy owns and manages one of the largest private nature preserve systems in the nation. TNC depends on private contributions.

North Carolina Natural Heritage Foundation

P.O. Box 11105
Raleigh, N.C. 27604

This organization supports the work of the State's Natural Heritage Program. It is dedicated to the preservation of environmentally significant lands, and promotes natural areas inventory, public education, landowner awareness and assistance, and conservation agreements with landowners. It assists local conservation foundations and land trusts. It receives donations for the support of these projects, and can also acquire land and conservation easements.

National Audubon Society

950 Third Avenue
New York, New York 10022
212-832-3200

Southeast Regional Office

P.O. Box 1268
Charleston, S.C. 29402
803-723-6171

The National Audubon Society and its local chapters in North Carolina may acquire properties that protect special wildlife habitats. Audubon now owns one large preserve on the North Carolina coast and plans to establish a series of coastal sanctuaries for colonial nesting birds. Local chapters may also acquire land for specific purposes.

Botanical Garden Foundation

N.C. Botanical Garden
100 Totten Center
Laurel Hill Road
Chapel Hill, N.C. 27514
919-967-2246

This foundation is the support organization for the North Carolina Botanical Garden and is empowered to acquire and hold natural lands. It has acquired gifts of several important botanical preserves across the state. It prefers to acquire and manage sites of rare and unusual plant species and natural habitats valuable for public environmental education.

American Farmland Trust

1717 Massachusetts Avenue, N.W.
Washington, D.C. 20036
202-332-0769

North Carolina Field Office

411 N. Cherry Street
Winston-Salem, N.C. 27101
919-722-5468

This national organization is committed to the protection of farmland and farming opportunities. It informs citizens about the rapid depletion of the nation's farmlands. It acquires farmland, directly or through affiliated organizations, to demonstrate how farmland can be retained by private techniques. It recommends reform of public policies and initiation of new policy which promotes retention of farmland.

Conservation Foundation of North Carolina

P.O. Box 130
Carrboro, N.C. 27510
919-967-6914

This foundation acquires land in order to preserve special natural values. It also promotes public awareness and education on issues concerning conservation and natural resources.

National Wildlife Federation

1412 16th Street, N.W.
Washington, D.C. 20036
202-797-6800

S.E. Natural Resources Center
1033 Wade Avenue
Raleigh, N.C.
919-832-2971

This national organization of wildlife conservationists and sportsmen promotes conservation education and protection of wildlife and natural resources. It provides information to landowners for habitat management. NWF occasionally accepts gifts of property for conservation of wildlife habitats.

Trust for Public Land

82 Second Street
San Francisco, CA 94105
415-495-4014

Southeast Regional Office
219 East 5th Avenue
Tallahassee, FL 32303
904-222-9280

This national organization specializes in acquiring and protecting open space lands of public interest. It is oriented to urban open space and public recreational lands, but has engaged in protection of natural and scenic areas. It provides technical assistance to local land conservancies.

LOCAL AND REGIONAL LAND CONSERVATION FOUNDATIONS

(addresses available from N.C. Natural Heritage Program)

A growing number of local and regional land conservancies (sometimes known as land trusts) are organizing in all parts of North Carolina. Some are actively involved in acquiring and preserving natural areas and open space lands. Others are primarily devoted to promoting public education and shaping public policies toward the environment. These are citizen organizations formed in counties, communities, watersheds, and larger regions. They depend heavily on contributions of property and funds. Among the existing regional land conservancies are the Triangle Land Conservancy, the Coastal Federation, and Carolina Crossroads, with others being organized.

EDUCATION INSTITUTIONS

Universities and colleges in North Carolina may be interested in acquiring land or the right to use land if its use would benefit educational and research programs. A variety of significant natural areas are owned and managed by our state's educational institutions.

GOVERNMENT LANDHOLDING AGENCIES

A number of governmental agencies have authority to acquire and manage land. Their interest in a specific site will depend on the objectives of the agency, its practical ability to finance and manage the land, and the significance of the property.

FEDERAL AGENCIES

Fish and Wildlife Service

United States Department of the Interior
Washington, D.C. 20240

Regional Office
Richard B. Russell Federal Building
75 Spring Street
Atlanta, GA 30303

The U.S. Fish and Wildlife Service acquires land of sufficient importance to become National Wildlife Refuges. The Service has the authority to accept conservation easements if the land supports endangered or threatened species, or are contiguous to an existing unit of the National Wildlife Refuge System. Eight refuges so far exist in this state.

National Park Service

United States Department of the Interior
Washington, D.C. 20240

Regional Office
Richard B. Russell Federal Building
75 Spring Street
Atlanta, GA 30303

The National Park Service acquires lands that qualify for inclusion in national parks, monuments, historic sites, seashores, and recreational areas. Land must possess national significance for recreational, historic, or natural values. The Service has the authority to accept conservation easements if the land is of national significance or provides protection to units of the National Park System.

U.S. Forest Service

United States Department of Agriculture
National Forests in North Carolina
P.O. Box 2750
Asheville, N.C. 28802
704-253-2352

This agency administers forest lands in the Pisgah, Nantahala, Uwharrie, and Croatan National Forests. It can reserve important natural areas for special management and preservation purposes. The Service can acquire property for addition to its forests, and it can accept conservation easements for lands that are of national significance or provide protection to National Forest lands.

STATE AGENCIES**Division of Parks and Recreation**

N.C. Department of Natural Resources & Community Development
P.O. Box 27687
Raleigh, N.C. 27611
919-733-4181

This agency administers a statewide system of parks, nature preserves, scenic rivers, trails, and recreational lakes. It may acquire lands to establish and enlarge units of the park system. It can receive conservation easements that protect and enhance units of the park system. The Division administers federal matching grant funds disseminated for state and local land conservation and recreation projects. It also assists and advises local park and recreation agencies. The Natural Heritage Program is a part of this agency.

Division of Coastal Management

N.C. Department of Natural Resources & Community Development
P.O. Box 27687
Raleigh, N.C. 27611
919-733-2293

This agency manages the state's units of National Estuarine Sanctuaries. With federal funds and land donations, it has acquired a series of representative estuarine ecosystems along North Carolina's coast. These sanctuaries serve as field laboratories for scientific research and public education, as well as support compatible types of recreational uses. The Division of Coastal Management and local governments so far have acquired more than 350 beach access sites and support facilities, providing public pathways to coastal waters without crossing private property. The beach access program also includes pathways to the shorelines of sounds and tidal creeks. These programs depend heavily on contributions of land and easements.

N.C. Wildlife Resources Commission

512 N. Salisbury St.
Archdale Building
Raleigh, N.C. 27611
919-733-7133

The Wildlife Resources Commission administers the state's system of gamelands for purposes of wildlife management, hunting and fishing. It owns some of these areas and leases others from private owners. The agency may also acquire land and conservation easements for the protection of endangered species and other special-interest wildlife.

LOCAL AGENCIES

Municipalities and Counties

Many municipal and county agencies throughout the state acquire land for public park and recreational facilities. All local governments are authorized to acquire conservation easements for protection of open space and natural lands. The advisability of municipal or county ownership of land or management of an easement will vary according to the agency's commitment to the wishes of a potential donor for protection or appropriate use as park and open space.

Soil and Water Conservation Districts

All counties of the state are within the jurisdictions of the 94 Soil and Water Conservation Districts. These locally controlled bodies are subdivisions of state government. They are responsible for developing programs for the conservation of soil and water resources. The districts are authorized to acquire land and partial interests in land for soil conservation, erosion control, flood prevention, and water resource conservation. To date the Districts have made limited use of this authority, but in many states the soil conservation districts have become active in preserving natural areas and open space lands for purposes of soil and water conservation.



APPENDIX A.

Charitable Deductions For Donations Of Land And Interests In Land

The use of tax incentives to encourage protection of land for conservation purposes actually means that the federal and state governments are engaged in financing the acquisition of land by conservation organizations. Tax incentives reduce the taxes otherwise payable by a landowner and constitute an indirect payment for the land or interest in land. Because of tax rate ceilings and a forbearance to tax gains, a donor of land may be reimbursed for up to 70 percent of the value of the land. The rest must be contributed. Tax incentive programs are based on the assumption that land conservation provides general public benefits.

A donor of land or interests in land is entitled to a charitable contribution deduction in computing income for federal and state tax purposes. The value of a parcel of land for the purposes of a charitable deduction is based on its fair market value, as determined by appraisal. A donor who has owned land for at least one year may deduct up to 30 percent of the value of the gift from his or her adjusted gross income. Any undeducted balance is carried forward and may be deducted in each of the five succeeding years after the year of donation. Alternatively, the donor may elect to reduce the total deduction by 40 percent of the amount that would have been long-term capital gain, and take a deduction of up to 50 percent of adjusted gross income with any residue being carried forward for five years. The gift of a piece of land can convert the land — perhaps burdensome and not income producing — into cash, in the form of tax savings. This can be a great benefit especially to a high-bracket taxpayer.

While the law applying to tax deductions for contribution of an undivided portion of a taxpayer's entire interest in property or remainder interest (such as gifts with retained life estates) has remained consistent since the Tax Reform Act of 1969, the status of easements or restrictions on real property for conservation or historic preservation purposes has undergone significant changes. Amendments to the federal Internal Revenue Code by enactment of the Tax Treatment Extension Act of 1980 limited the deductions for conservation restrictions (easements). The tax law allows a deduction only for the donation of a "qualified conservation contribution," defined as a permanent restriction on the use of a real property given "exclusively for conservation purposes" to a government agency or a conservation organization qualified as a private charity with broad-based public support. "Conservation purpose" means — (1) preservation of land for outdoor recreation or education of the general public, (2) protection of natural habitats and ecosystems, (3) preservation of open space (including farmland and forest land) for the scenic enjoyment of the general public and pursuant to a clear governmental conservation policy and a significant public benefit, or (4) preservation of an historically important land area or certified historic structure (summarized from Internal Revenue Code section 170(h)(4)(A)).

APPENDIX B.

Historic Preservation And Conservation Agreements Act

The General Assembly of North Carolina enacts:

Section 1. The title of this act shall be known as the Historic Preservation and Conservation Agreements Act.

Section 2. Definitions. Subject to any additional definitions contained in this act, or unless the context otherwise requires:

(1) A "preservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant, condition or otherwise, in any deed, will or other instrument executed by or on behalf of the owner of the land or any improvement thereon, or in any other of taking, appropriate to preservation of a structure or site historically significant for its architecture, archaeology, or historical associations, to forbid or limit any or all (a) alteration, (b) alterations in exterior or interior features of the structure, (c) changes in appearance or condition of the site, (d) uses not historically appropriate, or (e) other acts or uses supportive of or detrimental to appropriate preservation of the structure or site.

(2) A "conservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominately in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all (a) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (b) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (c) removal or destruction of trees, shrubs, or other vegetation, (d) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (e) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominately in its natural condition, (f) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (g) other acts or uses detrimental to such retention of land or water areas.

(3) "Holder" means any public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision or municipal or public corporation, or any instrumentality of any of the foregoing, any nonprofit corporation or trust, or any private corporation or business entity whose purposes include any of those stated in (1) and (2) above, covering the purposes of preservation and conservation agreements.

Section 3. Applicability. (a) This act shall apply to all conservation and preservation agreements falling within its terms and conditions. (b) This act shall not be construed to make unenforceable any restriction, easement, covenant or condition which does not comply with the requirements of this act. (c) This act shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise,

inheritance, eminent domain or otherwise and to use property of any kind for public purposes.

Section 4. Acquisition and Approval of Conservation and Preservation Agreements. Subject to the conditions stated in this act, any holder may, in any manner, acquire, receive or become a party of a conservation agreement or a preservation agreement.

Section 5. Validity of Agreements. (a) No conservation or preservation agreement shall be unenforceable because of (1) lack of privity of estate or contract, or (2) lack of benefit to particular land or person, or (3) the assignability of the benefit to another holder as defined in this act. (b) Such agreements are interests in land and may be acquired by any holder in the same manner as it may acquire other interests in land. (c) Such agreements may be effective perpetually or for shorter stipulated periods of time. (d) Such agreements may impose present, future, or continuing obligations on either party to the agreements, or their successors, in furtherance of the purposes of the agreement.

Section 6. Enforceability of Agreements. (a) Conservation or preservation agreements may be enforced by the holder by injunction and other appropriate equitable relief administered or afforded by the courts of this State. Where appropriate under the agreement, damages, or other monetary relief may also be awarded either to the holder or creator of the agreement or either of their successors for breach of any obligations undertaken by either. (b) Such agreements shall entitle representatives of the holder to enter the involved land or improvement in a reasonable manner and at reasonable times to assure compliance.

Section 7. Assessment of Land or Improvements Subject to Agreement. For purposes of taxation, land and improvements subject to a conservation or preservation agreement shall be assessed on the basis of the true value of the land and improvement less any reduction in value caused by the agreement.

Section 8. Public Recording of Agreements. (a) Conservation agreements shall be recorded in the office of the Register of Deeds of the county or counties in which the subject land or improvement is located, in the same manner as deeds are now recorded. (b) Releases or terminations of such agreements shall be recorded in the same waiver. Releases or terminations, or the recording entry, shall appropriately identify by date, parties, and book and pages of recording, the agreement which is the subject of the release or termination.

Section 9. Short Title. This act shall be known and may be cited as Uniform Conservation and Historic Preservation Agreement Act.

Section 10. This act is effective upon ratification and applies only to agreements executed, created or entered into after that date.

In the General Assembly read three times and ratified, this the 1st day of June, 1979.

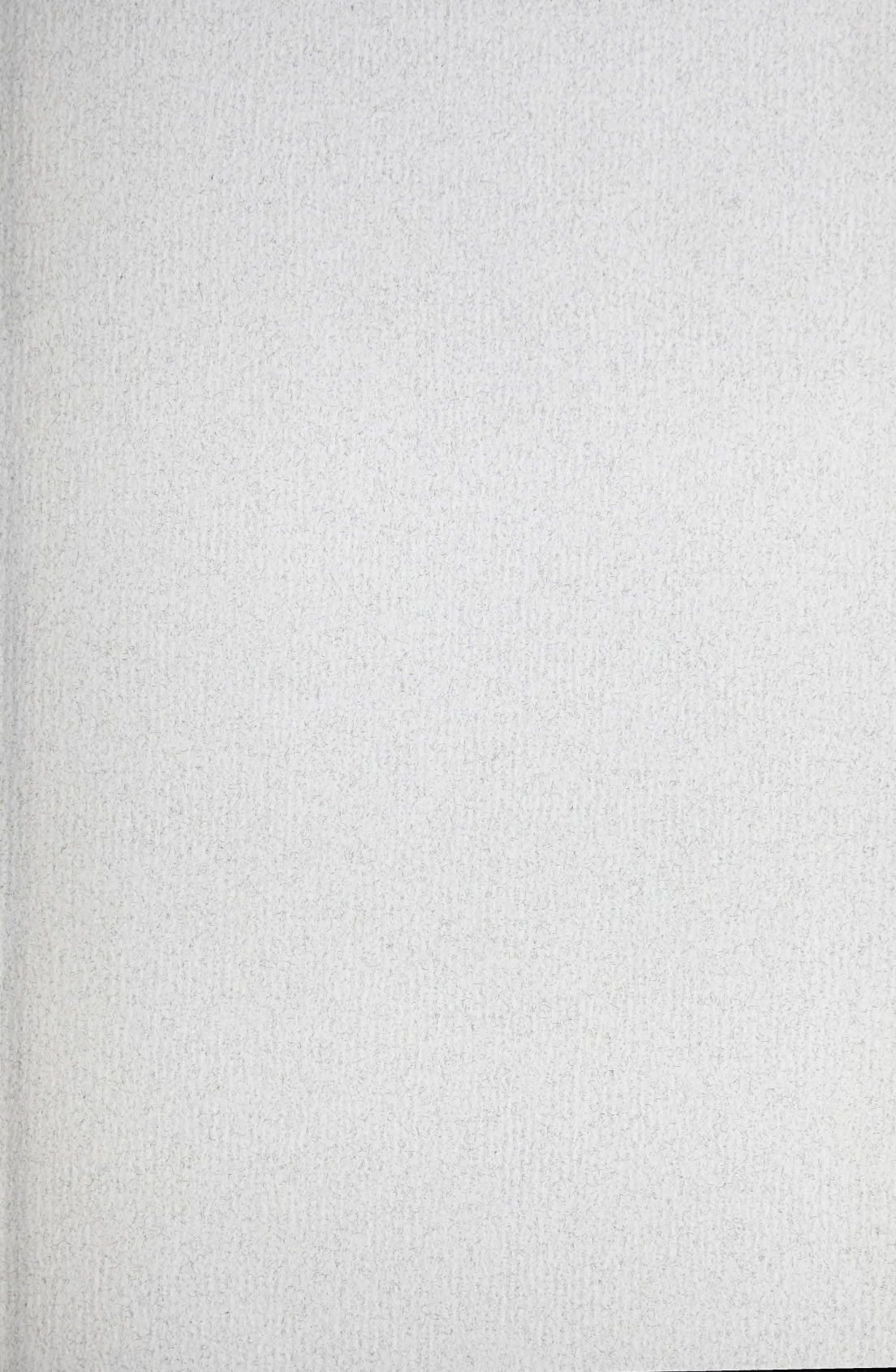
APPENDIX C.

State Income Tax Certification Process For Gifts Of Land For Conservation

North Carolina provides state income tax credit for donations of interests in real property for conservation purposes (G.S. 105-130.34 et.seq.). The N.C. Department of Revenue allows state income tax credits equal to 25 percent of the fair market value of the donated property interest, up to a maximum credit of \$5,000 for a taxable year, for property donations certified as qualified conservation purposes by the N.C. Department of Natural Resources and Community Development (DNRCD). Donors seeking tax credit certification or advanced rulings must submit an application to the DNRCD Assistant Secretary of Natural Resources. Applications may be obtained by writing or calling the Assistant Secretary of Natural Resources, NC DNRCD, P.O. Box 27687, Raleigh, N.C. 27611, phone 919-733-4984.

The application requires submittal of description and location of the donated property; proposed future use and purpose of the donated property; the liens, easements, and encumbrances on the property; description of the type of interest donated and any restrictions or reservations retained by the donor; name of the proposed recipient; and other supporting maps, photographs, and documentation. When seeking certification prior to donation, the application must be submitted four months prior to the close of the tax year to assure time for certification and donation. When seeking certification after donation, the application must be submitted no later than the close of the tax year to assure time for certification to be applied to that tax year.

The DNRCD will conduct a review of the proposed donation and may visit the property for an on-site investigation. A final decision on the certification request will be made within 60 days after receiving the completed application. If the donation cannot be certified for state tax credit, the Assistant Secretary will notify the applicant with the reasons.





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